

Supreme Court Copy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO et al.,

Petitioners,

S168078

v.

MARK D. HORTON, as State Registrar of Vital
Statistics, etc. et al.,

Respondents,

SUPREME COURT
FILED

DEC 19 2008

Frederick K. Onitch Clerk

DENNIS HOLLINGSWORTH et al.,

Deputy

Intervenors.

RESPONDENT'S ANSWER TO SECOND AMENDED PETITION FOR EXTRAORDINARY RELIEF

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ANSWER

Respondent Edmund G. Brown Jr., in his official capacity as Attorney General for the State of California (Respondent) answers Petitioners City and County of San Francisco et al.'s (collectively, Petitioners) Second Amended Petition for Extraordinary Relief as follows:

PRELIMINARY AND JURISDICTIONAL STATEMENT

1. In response to paragraph 1, Respondent admits that the identities of the petitioners seeking extraordinary relief from this Court. Respondent admits that Mark D. Horton is the State Registrar of Vital Statistics of the State of California and Director of the California Department of Public Health (CDPH), that Linette Scott is the Deputy Director of Health,

Information & Strategic Planning for the CDPH, and that Edmund G. Brown Jr. is the Attorney General for the State of California.

2. Respondent denies the allegations of paragraph 2 on the basis that they constitute legal argument or state legal conclusion to which no response is now required.

3. Respondent admits that the exercise of original jurisdiction by this Court is appropriate in this case.

4. For lack of information, Respondent neither admits nor denies that Petitioners have no other plain, speedy or adequate remedy at law.

THE PARTIES

5. Respondent admits that the City and County of San Francisco is a charter city and county organized and existing under the Constitutional and laws of the State of California. For lack of information, Respondent neither admits nor denies the remaining allegations of paragraph 5.

6. Respondent admits that the County of Santa Clara is a charter county organized and existing under the Constitutional and laws of the State of California. For lack of information, Respondent neither admits nor denies the remaining allegations of paragraph 6.

7. Respondent admits that the County of Los Angeles is a charter county organized and existing under the Constitutional and laws of the State

of California. For lack of information, Respondent neither admits nor denies the remaining allegations of paragraph 7.

8. Respondent admits that the County of Alameda is a charter county organized and existing under the Constitutional and laws of the State of California. For lack of information, Respondent neither admits nor denies the remaining allegations of paragraph 8.

9. Respondent admits that the County of Marin is a charter county organized and existing under the Constitutional and laws of the State of California. For lack of information, Respondent neither admits nor denies the remaining allegations of paragraph 9.

10. Respondent admits that the County of San Mateo is a charter county organized and existing under the Constitutional and laws of the State of California. For lack of information, Respondent neither admits nor denies the remaining allegations of paragraph 10.

11. Respondent admits that the County of Santa Cruz is a charter county organized and existing under the Constitutional and laws of the State of California. For lack of information, Respondent neither admits nor denies the remaining allegations of paragraph 11.

12. Respondent admits that the City of Los Angeles is a charter city organized and existing under the Constitutional and laws of the State of

California. For lack of information, Respondent neither admits nor denies the remaining allegations of paragraph 12.

13. Respondent admits that the City of Fremont is a charter city organized and existing under the Constitutional and laws of the State of California. For lack of information, Respondent neither admits nor denies the remaining allegations of paragraph 13.

14. Respondent admits that the City of Laguna Beach is a charter city organized and existing under the Constitutional and laws of the State of California. For lack of information, Respondent neither admits nor denies the remaining allegations of paragraph 14.

15. Respondent admits that the City of Oakland is a charter city organized and existing under the Constitutional and laws of the State of California. For lack of information, Respondent neither admits nor denies the remaining allegations of paragraph 15.

16. Respondent admits that the City of San Diego is a charter city organized and existing under the Constitutional and laws of the State of California. For lack of information, Respondent neither admits nor denies the remaining allegations of paragraph 16.

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17. Respondent admits that the City of Santa Cruz is a charter city organized and existing under the Constitutional and laws of the State of California. For lack of information, Respondent neither admits nor denies the remaining allegations of paragraph 17.

18. Respondent admits that the City of Santa Monica is a charter city organized and existing under the Constitutional and laws of the State of California. For lack of information, Respondent neither admits nor denies the remaining allegations of paragraph 18.

19. Respondent admits that the City of Sebastopol is a charter city organized and existing under the Constitutional and laws of the State of California. For lack of information, Respondent neither admits nor denies the remaining allegations of paragraph 19.

20. For lack of information, Respondent neither admits nor denies the allegations of paragraph 20. However, Respondent admits that there are gay and lesbian couples who wish to marry and are now unable to do so since the passage of Proposition 8.

21. For lack of information, Respondent neither admits nor denies the allegations of paragraph 21. However, Respondent admits that there are gay and lesbian couples who wish to marry and are now unable to do so since the passage of Proposition 8.

22. For lack of information, Respondent neither admits nor denies the allegations of paragraph 22. However, Respondent admits that there are gay and lesbian couples who wish to marry and are now unable to do so since the passage of Proposition 8.

23. For lack of information, Respondent neither admits nor denies the allegations of paragraph 23. However, Respondent admits that there are gay and lesbian couples who wish to marry and are now unable to do so since the passage of Proposition 8.

24. For lack of information, Respondent neither admits nor denies the allegations of paragraph 24. However, Respondent admits that there are gay and lesbian couples who wish to marry and are now unable to do so since the passage of Proposition 8.

25. For lack of information, Respondent neither admits nor denies the allegations of paragraph 25. However, Respondent admits that there are gay and lesbian couples who wish to marry and are now unable to do so since the passage of Proposition 8.

26. For lack of information, Respondent neither admits nor denies the allegations of paragraph 26. However, Respondent admits that there are gay and lesbian couples who wish to marry and are now unable to do so since the passage of Proposition 8.

27. Respondent admits the allegations of paragraph 27.

28. Respondent admits the allegations of paragraph 28.

29. Respondent admits the allegations of paragraph 29.

FACTS

30. Respondent admits that the California Supreme Court issued an opinion in *In Re Marriage Cases* (2008) 43 Cal.4th 757. Because the opinion speaks for itself, Respondent neither admits nor denies the accuracy of Petitioners' characterization of the opinion in paragraph 30.

31. For lack of information, Respondent neither admits nor denies the allegations of paragraph 31. However, Respondent admits that thousands of gay and lesbian couples married following the decision in *In re Marriage Cases*, *supra*, and before the passage of Proposition 8.

32. Respondent admits that Proposition 8 qualified for the General Election held on November 4, 2008 and was approved by voters by 52.3% of the voters, and opposed by 47.7% of the voters.

33. Respondent admits that the Proposition 8 amended the California Constitution to state that "[o]nly marriage between a man and a woman is valid or recognized in California." Because the language of Proposition 8 speaks for itself, Respondent neither admits nor denies the accuracy of

Petitioners' characterization of the proposition in paragraph 33. Respondent further denies the allegations of paragraph 33 on the basis that they constitute legal argument or state legal conclusion to which no response is now required.

CLAIMS ASSERTED

34. Respondent denies the allegations of paragraph 34 on the basis that they constitute legal argument or state legal conclusion to which no response is now required.

35. Respondent denies the allegations of paragraph 35 on the basis that they constitute legal argument or state legal conclusion to which no response is now required.

36. Respondent denies the allegations of paragraph 36 on the basis that they constitute legal argument or state legal conclusion to which no response is now required.

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PRAYER FOR RELIEF


WHEREFORE, Respondent prays as follows:

1. That the Amended Petition for Extraordinary Relief be granted; and
2. For such further and other relief as this court may deem proper.

Dated: December 19, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California
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capacity

DECLARATION OF SERVICE BY FACSIMILE AND MAIL

Case Name: ***City and County of San Francisco, et al. v. Mark B. Horton, et al.***

Case No.: **S168078**

I declare:

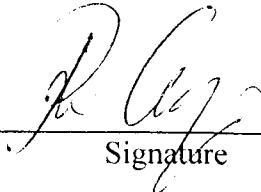
I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business. My facsimile machine telephone number is (916) 324-8835.

On December 19, 2008, I served the attached **RESPONDENT'S ANSWER TO SECOND AMENDED PETITION FOR EXTRAORDINARY RELIEF** by transmitting a true copy by facsimile machine, pursuant to California Rules of Court, rule 2.306. The facsimile machine I used complied with Rule 2.306, and no error was reported by the machine. Pursuant to rule 2.306(g)(4), I caused the machine to print a record of the transmission, a copy of which is attached to this declaration. In addition, I placed a true copy thereof enclosed in a sealed envelope with postage thereof fully prepaid, in the internal mail system of the Office of the Attorney General, addressed as follows:

PLEASE SEE THE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 19, 2008, at Sacramento, California.

Rowena A.R. Aquino
Declarant



Signature

SERVICE LIST FOR CITY AND COUNTY OF SAN FRANCISCO v. HORTON

CALIFORNIA SUPREME COURT CASE NO. S168078

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